

STATE OF MICHIGAN
COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN,

Plaintiff-Appellee,

v

SHANEE DALYNN SHEPARD-CRUZ,

Defendant-Appellant.

UNPUBLISHED

March 17, 2020

No. 348239

Wayne Circuit Court

LC No. 18-004382-01-FH

Before: STEPHENS, P.J., and CAVANAGH and SERVITTO, JJ.

PER CURIAM.

Defendant appeals as of right her jury conviction of malicious destruction of a building, \$1,000 or more, but less than \$20,000, MCL 750.380(3)(a). We affirm.

I. FACTUAL BACKGROUND

Between November 2017 and March 1, 2018, defendant and her wife, Monique, as well as their children, lived in the lower unit of a duplex located in Detroit. Monique’s mother and brother, Lisa Cruz and Maurice Cruz, were part owners of the duplex. On March 1, 2018, between 5:00 p.m. and 7:30 p.m., defendant moved her family’s belongings out of the lower unit by herself. Maurice and Aliyah Dupree, a tenant in the upper unit of the duplex, saw defendant moving her family’s belongings out of the lower unit by herself. While defendant was moving out, Dupree heard loud crashing noises and testified that she and Maurice witnessed defendant breaking the bathroom tile.

After defendant finished moving out of the lower unit, Dupree, Lisa, and Maurice walked through the lower unit. The lower unit had been destroyed. The front door of the duplex had been removed from the door frame. The tile in the bathroom was broken into pieces. The faucets on the bathroom sink had been removed. The toilet was taken out of the bathroom and placed in the living room. The hardwood floors were scratched from the toilet being dragged across the floor. A cement-like substance was placed in plumbing and electrical sockets in the bathroom. The glass of the large window in the living room was shattered. The light fixtures in the bedrooms had been broken and one bedroom was covered in dog feces. Finally, the dividing wall in the basement had been broken. Maurice estimated that it would cost approximately \$3,000 to repair the damage and

received an estimate for \$3,715 from Kevin Landskroener, the owner of Budget Brother's, LLC, for the repairs.

II. SUFFICIENCY OF THE EVIDENCE

Defendant argues that there was insufficient evidence presented to support her conviction of malicious destruction of a building, \$1,000 or more, but less than \$20,000. Specifically, defendant argues that the prosecution failed to prove, beyond a reasonable doubt, that she committed the offense and that she caused more than \$1,000 in damages. We disagree.

This Court reviews a challenge to the sufficiency of the evidence de novo. *People v Cline*, 276 Mich App 634, 642; 741 NW2d 563 (2007). To determine whether sufficient evidence was presented to support a conviction, we consider whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Reese*, 491 Mich 127, 139; 815 NW2d 85 (2012) (citation omitted). This standard of review is deferential and the reviewing court “is required to draw all reasonable inferences and make credibility choices in support of the jury verdict.” *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000). Circumstantial evidence and all reasonable inferences drawn therefrom can constitute sufficient proof of the elements of a crime. *Id.* (citation omitted).

To be convicted of malicious destruction of a building, \$1,000 or more, but less than \$20,000, “a defendant must have intended to injure or destroy the property in question.” MCL 750.380(3)(a); *People v Nelson*, 234 Mich App 454, 459; 594 NW2d 114 (1999). A defendant's intent may be inferred from circumstantial evidence including all of the surrounding facts and circumstances. *Id.* To determine the value of the damage, this Court has held that evidence may be presented of “either the difference in the property's fair market value or the reasonable cost to repair or restore the property.” *People v LaBelle*, 231 Mich App 37, 38; 585 NW2d 756 (1998).

Moreover, an essential element of every crime is the perpetrator's identity. *People v Fairey*, 325 Mich App 645, 649; 928 NW2d 705 (2018). The prosecution bears the burden to prove beyond a reasonable doubt that the specific defendant was the person who committed the alleged crime. *People v Bass*, 317 Mich App 241, 264; 893 NW2d 140 (2016). Identity can be established through either direct testimony or inferences drawn from circumstantial evidence. *Id.* at 263-264.

Maurice testified that when he walked through the lower unit at 9:00 a.m., on March 1, 2018, the unit was intact. When Maurice returned to the duplex at 5:00 p.m., defendant was present. The front door had been removed from the door frame, there was a broken toilet in the living room of the lower unit, and he heard “things banging.” Between 5:30 p.m. and 6:30 p.m., Dupree heard “sounds like things were being destroyed” and “crashes and things smashing into walls or things dropping real hard and breaking, shattering.” Lisa, Maurice, and Dupree all consistently testified that when they entered the lower unit between 7:30 p.m. and 9:00 p.m., on March 1, 2018, the front door had been removed from the duplex; the front window was broken; the toilet had been removed from the bathroom and placed into the living room; the tile in the bathroom was broken off of the walls and bathtub; the faucets on the bathroom sink were broken off; a cement-like substance was put into the drains and electrical sockets; there was dog feces in one of the bedrooms; the dry wall in the basement was broken; and the light fixtures in some of

the rooms were broken. Therefore, the evidence established that property damage to the lower unit occurred on March 1, 2018.

Sufficient evidence was also presented for a reasonable jury to find that it was defendant who caused the damage to the lower unit. Maurice saw defendant moving out of the lower unit at approximately 5:00 p.m. on March 1, 2018. When Maurice asked defendant if she and Monique were moving out, she told him to “mind [his] own God damn business.” Dupree similarly testified that she watched defendant, alone, move her belongings out of the lower unit between 5:00 p.m. and 6:30 p.m. While defendant was moving her belongings out of the lower unit, Dupree heard loud crashing noises and no other individuals had entered or exited the lower unit. Moreover, when defendant noticed that Dupree was videorecording her moving out after the loud crashing noises were heard, defendant threatened Dupree. Additionally, Dupree testified that she and Maurice watched defendant break the tile in the bathroom through a hole in the wall of the stairwell. Therefore, sufficient evidence was presented for a reasonable jury to infer that it was defendant who caused the damage to the lower unit.

Defendant argues that, because the lower unit “was left open and unprotected in a bad neighborhood for a lengthy period of time,” anyone could have caused the damage. We disagree. The evidence presented does not support defendant’s assertion that the lower unit was left unattended or unsecured for a lengthy period of time on March 1, 2018. According to Dupree, defendant finished packing her things into the moving truck and left between 6:30 p.m. and 7:00 p.m. Lisa testified that she arrived to the duplex between 7:30 p.m. and 8:00 p.m., and Maurice testified that he returned to the duplex between 8:30 p.m. and 9:00 p.m. Dupree also never stated that she or her siblings left the duplex that evening. Rather, Dupree and her siblings were home that evening and she only heard loud crashing sounds while defendant was moving her belongings out of the lower unit. Therefore, sufficient evidence was presented for a reasonable jury to find that the lower unit was not left unsecured for a lengthy period of time, and that another individual did not enter the lower unit and cause the damage.

Defendant also argues that there was insufficient evidence presented for a reasonable jury to find that she caused more than \$1,000 in damages. Defendant argues that the evidence only established that she damaged the bathroom tile which cost approximately \$150 to repair. We disagree.

As previously explained, sufficient evidence was presented for a reasonable jury to find that defendant caused all of the damage to the lower unit, not only the damage to the bathroom tile. Landskroener estimated that it would cost \$3,715 to repair the damage. Maurice estimated that the repairs would cost \$3,000. Lisa estimated that, at the time of trial, she and Maurice had spent approximately \$2,000 replacing the toilet, sink, front window, plumbing, and electricity in the bathroom. Therefore, sufficient evidence was presented for a reasonable jury to find that defendant caused more than \$1,000 worth of damage, but less than \$20,000 worth of damage.

Finally, defendant argues that there was insufficient evidence to support her conviction for the malicious destruction of a building because the prosecution’s witnesses were not credible. We disagree. This Court has established that, “[i]n determining whether sufficient evidence was presented to support a conviction, the reviewing court will not interfere with the fact-finder’s role

of deciding the credibility of the witnesses.” *People v Solloway*, 316 Mich App 174, 180; 891 NW2d 255 (2016).

III. IMPROPER VOUCHING

Defendant argues that the prosecutor improperly vouched for the truthfulness of her witnesses in her rebuttal argument; thus, defendant was denied her constitutional right to a fair trial. We disagree.

A preserved claim of prosecutorial misconduct is a constitutional issue and is reviewed de novo. *People v Brown*, 279 Mich App 116, 134; 755 NW2d 664 (2008). “The test of prosecutorial misconduct is whether the defendant was denied a fair and impartial trial.” *Id.* This Court reviews preserved issues of prosecutorial misconduct “on a case-by-case basis by examining the record and evaluating the remarks in context, and in light of defendant’s arguments.” *People v Thomas*, 260 Mich App 450, 454; 678 NW2d 631 (2004).

Because the task of judging the credibility of witness testimony is reserved for the jury, “the prosecutor cannot vouch for the credibility of his witnesses to the effect that he has some special knowledge concerning a witness’ truthfulness.” *People v Bahoda*, 448 Mich 261, 276; 531 NW2d 659 (1995). However, “a prosecutor may comment on his own witnesses’ credibility during closing argument, especially when there is conflicting evidence and the question of the defendant’s guilt depends on which witnesses the jury believes.” *Thomas*, 260 Mich App at 455. A prosecutor may also argue from the evidence, and the reasonable inferences arising from the evidence, that a witness is worthy or unworthy of belief. *People v Dobek*, 274 Mich App 58, 66-67; 732 NW2d 546 (2007). See also *People v McGhee*, 268 Mich App 600, 630; 709 NW2d 595 (2005) (concluding that a prosecutor may argue “from the facts that a witness should be believed”). Improper vouching occurs when the prosecutor suggests that the government has some special knowledge of which the jury is unaware that the witness testified truthfully. *Bahoda*, 448 Mich at 276.

As a preliminary matter, defendant failed to cite the portion of the prosecutor’s rebuttal argument that she is contesting. See MCR 7.212(C)(7) (“Facts stated must be supported by specific page references to the transcript, the pleadings, or other document or paper filed with the trial court.”). However, it appears that defendant is referring to the following portion of the prosecutor’s rebuttal argument:

Ms. Goel [the prosecutor]: Thank you. This happened over a year ago, March 1st, 2018[,] and inconsistencies, they happen, but it doesn’t mean that the witnesses are lying. In fact, I would submit to you that each one of the witnesses got up there and told you the truth.

They were correcting me. They were correcting Mr. Schlaff [defense counsel]. They were telling you what they saw, what they remembered and they were doing so truthfully. I would --

Mr. Schlaff: Your Honor, I would object. I don’t think the prosecutor can vouch for the truthfulness. That’s up to the jury.

Ms. Goel: Okay.

The Court: Well, I think that it can be interpreted that she's arguing that based on the evidence that [the jury] should conclude that [the witnesses] testified truthfully. I'll overrule your objection and the jury understands that the arguments of the lawyers are not evidence and they're the finders of fact. Okay.

Ms. Goel: Thank you. It's up to you to judge the credibility of those witnesses. Mr. – there was some credibility doubt om [Dupree]. [Dupree is] sixteen. She has no dog in this fight. She was home. She was with her family when she heard these noises and then when she went to see what was happening she sees [defendant] and what does [defendant] do?

[Defendant] threatens her, threatens to beat her up. So what does she do in response? She does what any sixteen year old would do. Calls her mom. She's being truthful. She's being – it is my – I ask you to find that she's being truthful, that she is being honest.

Look at her demeanor. Look at the way she answered the questions and judge her credibility for yourself . . .

Defense counsel's closing argument focused on undermining the credibility of the prosecution's witnesses. Defense counsel began his closing argument by stating:

Mr. Schlaff: . . . [O]ne of the things we emphasized at the beginning of the case was credibility of the witnesses and one of the things that I attempted to do and I asked you questions in voir dire is whether you were going to accept everything from the witness stand as being truthful, as being one hundred percent credible, as being the facts of the case or were you going to weigh what the witnesses had to say?

Were you going to examine from all the circumstances that surround the case and were you go[ing] to look for things that might – might effect [sic] the credibility of the witnesses . . .

Defendant's counsel then proceeded to point out inconsistencies of the witnesses' statements and explicitly asked the jury not to find Maurice credible.

Defendant contends that "the prosecutor improperly weighed the scale against [defendant] by bolstering [the witnesses'] testimony." However, "[a] prosecutor may fairly respond to an issue raised by the defendant." *Brown*, 279 Mich App at 135. Additionally, a prosecutor is given great latitude to argue the evidence and all inferences relating to his theory of the case. *Bahoda*, 448 Mich at 282 (citations omitted). Here, when considered in context, the prosecutor's comments were merely responsive and did not constitute improper vouching. The prosecutor did not imply that she had special knowledge regarding Dupree's truthfulness. Rather, the prosecutor relied on the evidence which had been presented to support her argument that Dupree testified truthfully and to rebut defendant's argument that the jury should find the witnesses not credible.

Additionally, defendant's counsel timely objected to the prosecutor's alleged improper vouching. The trial court promptly informed the jury "that the arguments of the lawyers are not evidence and they're the finders of fact." See *People v Rodriguez*, 251 Mich App 10, 31; 650 NW2d 96 (2002) (holding that the trial court's direct response to the defendant's objection to the prosecutor's statements was sufficient to cure the prejudicial effect of the prosecutor's error). The prosecutor also repeatedly emphasized that it was the jury's responsibility to determine the credibility of the witnesses. Furthermore, the jury received an instruction on witness credibility. The instruction informed the jury that it was their duty to decide which witnesses to believe and what weight to assign to each of their testimony. "Curative instructions are sufficient to cure the prejudicial effect of most inappropriate prosecutorial statements." *People v Seals*, 285 Mich App 1, 22; 776 NW2d 314 (2009). Therefore, the prosecutor's comments during her rebuttal argument did not constitute improper vouching that denied defendant a fair trial and defendant is not entitled to relief.

Affirmed.

/s/ Cynthia Diane Stephens
/s/ Mark J. Cavanagh
/s/ Deborah A. Servitto